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LOCKHEED MARTIN CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EMILIO COLLADO,

Plaintiff,

v.

LOCKHEED MARTIN, and DOES 1  
THROUGH 20, inclusive,

Defendants.

Case No. CV 07-05190 JF

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS  
AND TO STRIKE PURSUANT TO FED. R.  
CIV. P. 12(b)6; 12(f)**

Date: November 30, 2007  
Time: 9:00 a.m.  
Judge: Hon. Jeremy Fogel  
Courtroom: 3, 5<sup>th</sup> Floor

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Lockheed Martin Corporation's ("Defendant") motion to dismiss Plaintiff Emilio Collado's ("Plaintiff") Fifth Cause of Action pursuant to Federal Rule of Civil Procedure 12(b)(6), and motion to strike certain allegations in Plaintiff's Complaint under Federal Rule of Civil Procedure 12(f) came on regularly for hearing before this Court on November 30, 2007. After consideration of the briefs and arguments of counsel, and all other matters presented to the Court, IT IS HEREBY ORDERED:

(1) Defendant's motion to dismiss Plaintiff's Fifth Cause of Action for a breach of the implied covenant of good faith and fair dealing on the grounds that Plaintiff failed to state a

2.

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND TO STRIKE PURSUANT TO FED. R. CIV. P. 12(B)6; 12(F)**

1 claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) is  
2 GRANTED;

3 (2) Defendant's Fed. R. Civ. P. 12(f) motion to strike the allegations contained in  
4 Paragraphs 15, 22, and 53 of Plaintiff's Complaint alleging race, national origin and ethnicity  
5 discrimination, in violation of the Fair Employment and Housing Act "FEHA" on the grounds that  
6 these claims are time-barred under California Government Code section 12965(b) is GRANTED;

7 (3) Defendant's Fed. R. Civ. P. 12(f) motion to strike the allegations contained in  
8 Paragraphs 15, 22, 34, and 53 of Plaintiff's Complaint alleging race, national origin and ethnicity  
9 discrimination, in violation of the FEHA on the grounds that Plaintiff fails to plead sufficient notice  
10 of the claims under Fed. R. Civ. P. 8(a)(2) is GRANTED;

11 (4) Defendant's Fed. R. Civ. P. 12(f) motion to strike Plaintiff's claims for  
12 emotional distress on his third and fifth causes of action on the ground that tort damages are not  
13 recoverable on contract based claims is GRANTED.

14  
15 IT IS SO ORDERED.

16  
17 DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. JEREMY FOGEL